

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
WASHINGTON NATURAL GAS COMPANY,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 77-110
FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

PER W. A. GISSBERG:

A formal hearing on an alleged violation of Section 9.11(a) of respondent's Regulation I came on regularly before W. A. Gissberg, Presiding, Chris Smith and Dave J. Mooney, on October 28, 1977, in Seattle, Washington.

Appellant appeared by and through its attorney Timothy Hogan; respondent by Keith D. McGoffin

Having heard the testimony and being fully advised, the Board makes and enters the following

1 FINDINGS OF FACT

2 I

3 Respondent, pursuant to RCW 43.21B.260, has filed with this
4 Board a certified copy of its Regulation I containing respondent's
5 regulations and amendments thereto.

6 II

7 Washington Natural Gas Company, a utility engaged in the
8 distribution and sale of natural gas, installed a pressure limiting
9 station in 1961 about 75 feet easterly of what is now the residence of
10 Carl Deese at 9204 Holly Drive, Everett, Washington. That station
11 and more than twenty others of the same construction, are necessary
12 to regulate the gas pressure in response to consumer demand. In
13 order that the regulator can properly operate and perform its
14 function, a small amount of gas must continuously flow through it.
15 Each station has pipe extending vertically from the ground some 10
16 feet into the air from the top of which gas is vented into the
17 atmosphere at a volume not in excess of four cubic feet per hour.
18 Such amount of gas roughly corresponds, at most, to that which would
19 be required to burn four gas appliance pilot lights for one hour.

20 III

21 Natural gas is colorless and rises quickly and dissipates
22 rapidly when introduced into the ambient air. It is also odorless
23 in its original state, and in itself is non-toxic, but is required by
24 federal law to be rendered odoriferous, in order that its presence
25 may be detected. Nonetheless the gas which escapes from the vent
26 is not capable of explosion or ignition after it is emitted into

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1 the ambient air and reaches appellant's property, although its odor
2 may be detected.

3 IV

4 Aside from the events hereinafter described, the gas company has
5 received no other complaints about gas odor from the other venting
6 devices throughout its distribution system.

7 Mr. Deese has detected the odor of gas in both the front and
8 back yards of his residence since moving there in July, 1976. He
9 complained on several occasions about the gas odor which at
10 times was "very bad" and although the odor could not be
11 detected inside of his home, the odor outside did "scare" him.
12 However, he suffered no other ill effects therefrom although he "thinks"
13 he had headaches more frequently when the odor was present than when
14 it was not.

15 Acting in response to five separate complaints from Mr. Deese,
16 respondent's inspector, standing 65 feet from the gas vent, found
17 odors as follows on a scale of 0-4:

- 18 (1) February 7, 1977, natural gas odor of
19 #1 intensity, following which he notified
appellant's local Everett manager.
- 20 (2) March 4, 1977, natural gas odor of
21 #2 intensity, being one of "unpleasant
22 characteristics", for which he issued
a notice of violation but no civil penalty.
- 23 (3) April 29, 1977, no odor was detected.
- 24 (4) May 31, 1977, natural gas odor of #3
25 intensity, being one "strong enough to
cause a person to avoid the odor completely",
for which he issued a notice of violation but
no civil penalty.

26
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1 (5) June 21, 1977, natural gas odor of #2
2 intensity, for which he issued the
3 notice of violation and following which was
4 imposed the \$250 civil penalty which
5 precipitated the instant appeal.

6 V

7 Although perceptions of the relative strengths of odors vary
8 among inspectors and respondent employs no mechanical or objective
9 standard for detecting and measuring the odor, one attaining an
10 "unpleasant characteristic" leads to the issuance of a notice of
11 violation.

12 VI

13 At all times above mentioned there was and still is sewage
14 draining ~~into the road ditch in front of the Deese residence~~. On
15 July 7, 1977, after the imposition of the civil penalty here involved,
16 appellant shut down the instant pressure station and also caused
17 certain construction work to be done thereon to prevent the sewage in
18 the ditch from entering the station works. No further complaints have
19 been made by Mr. Deese and he erroneously believes the gas emissions to
20 have been permanently eliminated. However, the station will soon
21 have to be reopened and the gas odor will then reoccur through the
22 venting system. While both the natural gas odor additive and sewage
23 are sulphur compounds, the odors of each are distinguishable, although
24 a combination of those odors render the result stronger than one
25 alone.

26 VII

27 Section 9.11(a) of respondent's regulations makes it:

"unlawful for any person to cause or permit the
emission of an air contaminant or water vapor,

1 including an air contaminant whose emission is
2 not otherwise prohibited by this Regulation, if
3 the air contaminant or water vapor causes detriment
to the health, safety or welfare of any person, or
causes damage to property or business."

4 Section 1.07 defines an air contaminant as "dust, fumes, mist,
5 smoke, other particulate matter, vapor, gas, odorous substance, or any
6 combination thereof." (Emphasis supplied)

7 VIII

8 Any Conclusion of Law hereinafter stated which may be deemed
9 a Finding of Fact is hereby adopted as such.

10 From these Findings the Pollution Control Hearings Board
11 comes to these

12 CONCLUSIONS OF LAW

13 I

14 The alleged violation of Section 9.11(a) as contained in the
15 notice of violation (Ex. R-4) pertains to the "welfare" portion of
16 that section. Respondent's attorney stated, at the instant
17 hearing, that the issues of health and safety were not issues
18 in this case, nor is damage to property or business in issue.

19 The following question remains: Did the odor of "unpleasant
20 characteristic" which was emitted from the appellant's facility
21 cause detriment to the welfare of any person?

22 We answer in the negative. The evidence before us in the
23 instant case, viewed most favorably for respondent, at most shows
24 that appellant was "scared" by the smell of gas which, although on
25 June 21, 1977 was described as having an unpleasant characteristic,
; was both non-toxic and not dangerous. Moreover, since the

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1 result of a combination of sewer odor and natural gas odor is
2 stronger than either alone, we cannot find, from the evidence before
3 us, that the natural gas odor alone caused an odor of unpleasant
4 characteristic.

5 II

6 Appellant did not violate respondent's Regulation I and the notice
7 of civil penalty should be vacated.

8 III

9 With appropriate evidence, however, this Board would not
10 hesitate to uphold civil penalties imposed against appellant. We
11 therefore urge appellant to immediately apply to respondent for a
12 variance pending a technological solution to the problem.

13 IV

14 Any Finding of Fact which should be deemed a Conclusion
15 of Law is hereby adopted as such.

16 From these Findings, the Pollution Control Hearings Board issues
17 this


18 ORDER

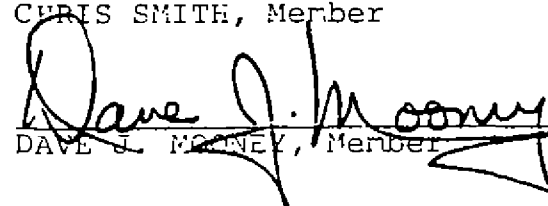
19 The civil penalty is vacated.

20 DATED this 28th day of November, 1977.

21 POLLUTION CONTROL HEARINGS BOARD

22 
23 W. A. GISSBERG, Chairman

24 
25 CHRIS SMITH, Member

26 
27 DAVE J. MOONEY, Member

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